

#### Members

Rep. David Orentlicher, Chairperson  
Rep. Scott Pelath  
Rep. Vernon Smith  
Rep. Jonathan Elrod  
Rep. Ralph Foley  
Rep. Amos Thomas  
Sen. Richard Bray, Vice-Chairperson  
Sen. Brent Steele  
Sen. Brent Waltz  
Sen. Karen Tallian  
Sen. John Broden  
Sen. Earline Rogers



## **BOWSER COMMISSION**

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Commission  
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Authority: Legislative Council Resolution 07-01

### **MEETING MINUTES<sup>1</sup>**

**Meeting Date:** October 29, 2007  
**Meeting Time:** 11:10 A.M.  
**Meeting Place:** State House, 200 W. Washington St.,  
Room 404  
**Meeting City:** Indianapolis, Indiana  
**Meeting Number:** 4

**Members Present:** Rep. David Orentlicher, Chairperson; Rep. Scott Pelath; Rep. Vernon Smith; Rep. Jonathan Elrod; Rep. Amos Thomas; Sen. Brent Steele; Sen. Karen Tallian; Sen. John Broden; Sen. Earline Rogers.

**Members Absent:** Rep. Ralph Foley; Sen. Richard Bray, Vice-Chairperson; Sen. Brent Waltz.

Rep. Orentlicher called the meeting to order at 11:10 a.m.

The members reviewed and approved the [minutes from the October 16<sup>th</sup> meeting](#) with no changes.

The members reviewed a [draft of language](#) that requires a jury to be a fact finder in a sentencing hearing in a capital case. Under current law, if a defendant is convicted of murder in a bench trial or if the defendant pleads guilty, the judge conducts the sentencing hearing. In the proposed draft, a defendant has the right to have a jury impaneled during sentencing in a capital case, even if the defendant pleads guilty or has a bench trial. However a defendant may waive this right.

Staff attorney Andy Hedges told the Commission members that in the 2002 [Ring v. Arizona](#) decision, the U.S. Supreme Court held that a defendant has a constitutional right to have a jury determine whether aggravating factors exist that make the defendant eligible for a death sentence.

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<sup>1</sup> Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

The Commission members voted 7 - 0 in favor of recommending the bill draft.

The Commission members then reviewed a [bill draft](#) that proposes that some mentally ill defendants who are being tried for murder would be disqualified from the death penalty during a pretrial hearing.

These defendants would have been diagnosed with a "severe mental illness" which could include schizophrenia, schizo-affective disorder, bipolar disorder, major depression, or a delusional disorder. And at the time of the offense, the defendant would have to have been delusional, have experienced hallucinations, or have conveyed extremely disorganized thinking or very significant disruption of consciousness, memory, and perception of the environment.

During a pretrial hearing, three psychologists or psychiatrists or a combination of both would be appointed to examine the defendant. Based on their reports, the court may determine whether the defendant is a person with a severe mental illness. If the person is convicted of committing murder but is declared to have a severe mental illness, then the person may be sentenced to either a determinate sentence or a sentence of life without parole. For purposes of this draft, the term "severe mental illness" does not include a mental disorder or disability manifested primarily by repeated criminal conduct or attributable solely to the acute effects of alcohol or other drugs.

Rep. Smith asked whether an adequate supply of psychologists and psychiatrists are available statewide for these types of requirements. Rep. Pelath indicated that from his experience there should be an adequate supply of psychologists and psychiatrists in the state with forensic experience.

Sen. Tallian noted two differences between the draft the Commission members were examining today and two previous drafts that are posted on the [Bowser Commission website](#).

First, the defendant would have to be experiencing active symptoms of delusions, hallucinations, extremely disorganized thinking, or very significant disruptions of consciousness, memory, and perception of the environment at the time of the offense.

Second, this draft includes additional qualifications for expert witnesses, including the fact that one member of the panel must be a psychiatrist.

Sen. Steele commented that he has reservations about the bill as drafted, but would like for his caucus to examine the document to determine whether Indiana could be the first state in the union to include this type of exclusion in statute. He also indicated that he is not sure whether a person who is diagnosed with major depression should be considered to be severely mentally ill and thus be exempted from the death penalty by a pretrial hearing.

The measure passed on a roll call vote of 7 - 2.

Finally, the Commission members examined a draft of the final report. Mark Goodpaster, lead staff for the Commission, indicated that a final report must be submitted to the Legislative Council within 10 working days of the final meeting. He noted that he would insert language in the final report about findings of fact and recommendations based on the discussions and votes that occurred at this meeting. He would send both the minutes and draft of the final report by email to all Commission members in the next 24 hours.

The Commission members voted in favor of the final report by a voice vote.

The meeting was adjourned at 11:50 a.m.